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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,222	10/18/2001	Ralf Oberbeck	THIELK-012XX	7404

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EXAMINER

BURNHAM, SARAH C

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/982,222

Applicant(s)

OBERBECK ET AL.

Examiner

Sarah C. Burnham

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-13 and 15-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, line 9 and claim 15, line 3, the phrase "a first gear rotatably disposed to said seat back" is vague and indefinite. It is unclear what "rotatably disposed to" means. Is the first gear rotatable with respect to the seat back or does it rotate with the seat back? The phrase is unclear and therefore the scope of the claim is undeterminable.

The following words/phrases lack sufficient antecedent basis:

- said intermediate gear (claim 6, line 1 and line 3)
- said swing level (claim 10, line 3; claim 11, line 2; claim 16, line 3; claim 17, line 2)
- said rotation axis (claim 15, line 4)
- said swing lever (claim 15, line 5)

Claims 12-13 and 18-19 are rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7 and 14-15 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 102(b) as being anticipated by Notta et al. (5,322,346).

With respect to claim 1, Notta discloses a seat adjustment mechanism (1) including a stepped switching mechanism (11). A swivel lever (22) is rotationally connected with a drive gear (6). A release mechanism (10) provides a releasable rotational connection between the stepped switching mechanism (11) and the drive gear (6) in that when the release mechanism (10) is activated (Figure 4), the drive gear (6) is not in contact with any other gears (i.e. (7)(8)) and drive gear (6) is free to rotate about a horizontal tilt axis (4).

With respect to claim 2, stepped switching mechanism (11) is rotationally connected with drive gear (6) via an intermediate gear (7) that may be displaced and disengaged from contact with drive gear (6) as seen in Figure 4.

With respect to claim 3, release mechanism (10) is in the form of a linkage device that serves to release the rotational connection facilitated by intermediate gear (7) between the stepped switching mechanism (11) and the drive gear (6).

With respect to claim 4, the intermediate gear (7) is free to rotate about a fixed axis (9).

With respect to claim 6, intermediate gear (7) is mounted on a swing lever (10) that is pre-tensioned by a spring (18). Intermediate gear (7) is releasably coupled by way of stepped switching mechanism (11) and gear (8) to swivel level (22).

With respect to claim 7, said drive gear (6) is part of a tilt adjustment mechanism (1) for a seat back (2) wherein said seat back (2) is pre-tensioned in a first direction by a spring (5).

With respect to claim 14, Notta discloses a seat mechanism (1) to rotate a seat back (2) relative to a seat body (3) about a horizontal tilt axis (4) comprising a plurality of gears (6)(7)(8) adapted to be in communication with each other; a swivel lever (22) in communication of said plurality of gears (6)(7)(8); and an engagement mechanism (10) in communication with swivel lever (22) such that when swivel lever (22) rotates, at least one of said gears (6) is not in communication with (see Figure 4) the other of said plurality of gears (7)(8) and whereby seat back (2) is freely rotatable about said horizontal tilt axis (4).

With respect to claim 15, said plurality of gears (6)(7)(8) includes a first gear (6) rotatably disposed to said seat back (2), a second gear (8) rotatably disposed about rotation axis (9), and a third gear (7) rotatably disposed about swivel lever (22) and in constant communication with second gear (8) in that third gear (7) is "rigidly fixed to shaft 9 as is" (column 5, line 19) second gear (8). Swivel lever is in communication with second gear (7) by way of engagement mechanism (10).

Allowable Subject Matter

5. Claim 9-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.
6. Claims 16-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Amendment/Arguments

7. The amendment filed on 30 June 2003 has been considered in its entirety. The remaining issues are detailed in the above sections. The arguments with respect to the Robinson and Olivieri are moot due to the new grounds of rejection set forth above.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1113.

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SCB
September 3, 2003



Peter M. Cuomo
Supervisory Patent Examiner
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